U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF D-D-P-

DATE: APR. 27, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an entrepreneur, seeks classification as a member of the professions holding an advanced degree or as an individual of exceptional ability. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is normally attached to this immigrant classification. *See* § 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not qualify as a member of the professions holding an advanced degree, and that he had not established that a waiver of a job offer requirement would be in the national interest. We dismissed the Petitioner's appeal and a subsequent combined motion to reopen and reconsider, finding that he did not qualify for classification as either an advanced degree professional or an individual of extraordinary ability, and was therefore not eligible for a national interest waiver.[1]

The matter is now before us on a combined motion to reopen and reconsider. On motion, the Petitioner submits a brief stating that he is providing new facts to establish eligibility as an individual of exceptional ability and that our previous motion decision was incorrect based on the previous record.

Upon review, we will deny both motions.

I. LAW

A motion to reopen is based on documentary evidence of new facts, and a motion to reconsider is based on an incorrect application of law or policy. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2), and the requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3).

[1] Our most recent decision in this matter is *Matter of D-D-P-* ID# 755301 (AAO September 22, 2017).

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences arts or business. Because this classification normally requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest. *See* section 203(b)(2) of the Act. While neither the statute nor the pertinent regulations define the term "national interest," we recently set forth a new framework for adjudicating national interest waiver petitions. *See Dhanasar*, 26 I&N Dec. 884.[2]

II. ANALYSIS

In denying the Petitioner's previous motion, we found that he did not establish he meets any of the six regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii) or has achieved the level of expertise required for exceptional ability classification. The Petitioner filed the current combined motion to reopen and reconsider contending that our previous motion decision was erroneous and again asserting that that he meets five of the six evidentiary requirements of 8 C.F.R. § 204.5(k)(3)(ii)(B-F). He claims that our previous decision did not consider all documentary evidence and he provides additional documentation in support of his eligibility.

A. Motion to Reconsider

In support of his motion to reconsider, the Petitioner asserts that "certain documentary evidence provided were [*sic*] not taken into consideration." However, he does not specifically identify documents that we overlooked. Instead, he generally argues that the evidence previously in the record establishes his eligibility. Our prior decisions thoroughly discussed that evidence and we find no error in our previous analyses. Further, the Petitioner does not offer pertinent precedent decisions or legal citations that demonstrate our latest decision was based on an incorrect application of law or USCIS policy.[3] Accordingly, the Petitioner has not met the requirements of a motion to reconsider.

B. Motion to Reopen

In his motion to reopen, the Petitioner provides additional evidence and information relating to the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(B-F). For the reasons discussed below, the new evidence does not overcome our previous findings or demonstrate eligibility for the claimed criteria.

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[2] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

[3] A motion to reconsider must be supported by a pertinent precedent or adopted decision, statutory or regulatory provision, or statement of U.S. Citizenship and Immigration Services (USCIS) or Department of Homeland Security policy.

> *Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought.* 8 C.F.R. § 204.5(k)(3)(ii)(B)

In our previous motion, we noted that the record does not include letters from prior employers attesting to the Petitioner's experience in the field as required by this criterion. With this motion, the Petitioner offers a letter from the Executive Director of who states that the Petitioner is the managing director of the organization. She writes that he has "been in full time operation in the US and also abroad since the last 10 years and more noting the U.S. subsidiary was just registered in 2016." Her statements contradict the Petitioner's resume and Form 9098 which indicates that he was employed by from February 2014 until March 2015, a little over one year. The Petitioner must resolve inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.* Here, the Petitioner has not resolved these inconsistencies.

Also on motion, the Petitioner provides a letter from managing partner of a chartered accountancy, states that his company has worked with the Petitioner "for many years" on projects such as the project in Nigeria, to develop solar powered fingerprinting in Nigeria, and the projects for erosion control and shoreline protection. While letter is complimentary of the Petitioner's work, he is not his employer and his statement does not sufficiently establish that the Petitioner has at least ten years of full-time experience in the occupation for which he is being sought, as required.

> *A license to practice the profession or certification for a particular profession or occupation.* 8 C.F.R. § 204.5(k)(3)(ii)(C).

In this motion, the Petitioner again claims that he meets this criterion based upon his licensure as a salesman from the Maryland Home Improvement Commission. He provides excerpts from the Maryland licensing authority indicating that the Maryland Home Improvement Commission holds the power within the state for regulating "green" home improvement projects including installation of solar paneling. As explained in our previous decision, the Petitioner is seeking eligibility as an individual of exceptional ability based upon his experience as an entrepreneur. He has not shown that a license to sell home improvement services relates to his stated profession. In his motion, he also claims to meet this criterion through his membership in the and several business registrations with the taxing authority in Nigeria or the Internal Revenue Service in the United States. However, business registrations do not qualify as either a license to practice his profession or a certification for a particular profession or occupation. As such, the submitted evidence does not demonstrate the Petitioner's eligibility for this criterion.

Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(D).

In this current motion, the Petitioner provides a copy of a procurement notice issued by the [redacted] in [redacted] Nigeria awarding [redacted] a contract to construct electricity infrastructure in rural areas; a copy of the 2013 bank statements for [redacted] and a contract between [redacted] and the [redacted] However, as we noted previously, the project earnings to not constitute the Petitioner's salary nor do the documents indicate that the Petitioner received personal remuneration for his services. As such, the newly submitted evidence does not overcome our previous finding or establish the Petitioner's eligibility for this regulatory criterion.

Evidence of membership in professional associations. 8 C.F.R. § 204.5(k)(3)(ii)(E).

We previously determined that the Petitioner did not meet this criterion. On motion, the Petitioner states that "there is no professional body directly responsible for entrepreneurs in the solar and renewable energy business other than you having the criteria capacity [*sic*] to qualify for a project and execute them which is why they ask for experience in a similar field." We note that there is no requirement that the Petitioner specifically meet this criterion; rather, the regulations include six criteria from which a petitioner must meet at least three. As the Petitioner has not established his membership in a professional association, we affirm our previous finding that he does not meet the regulatory criterion at 8 C.F.R. § 204.5(k)(3)(ii)(E).

Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations. 8 C.F.R. § 204.5(k)(3)(ii)(F).

In our appellate decision and the subsequent motion we found that the Petitioner has not provided letters or testimony from interested parties attesting to his achievements or significant contributions. With the instant motion, the Petitioner points to the letter from [redacted] While [redacted] states that his company has provided consulting and finance support to the Petitioner's projects, and he lists several of the Petitioner's business ventures, his statement does not constitute evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations. As such, the Petitioner has not established that he meets this regulatory criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F).

III. CONCLUSION

In this matter, the motion to reconsider does not establish that our previous findings were based on an incorrect application of the law, regulation, or USCIS policy, nor does the motion demonstrate that our latest decision was erroneous based on the evidence before us at the time of the decision. In addition, the evidence provided in support of the motion to reopen does not overcome the grounds

underlying our previous decision or establish eligibility for the benefit sought. Therefore, the motions are denied.

ORDER: The motion to reconsider is denied.

FURTHER ORDER: The motion to reopen is denied.

Cite as *Matter of D-P-P-*, ID# 1092319 (AAO Apr. 27, 2018)